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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,598	09/12/2001	Tim Goldstein	10007811-1	8279

7590 04/26/2007
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

SELBY, GEVELL V

ART UNIT	PAPER NUMBER
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2622

MAIL DATE	DELIVERY MODE
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04/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/954,598

Applicant(s)

GOLDSTEIN ET AL.

Examiner

Gevell Selby

Art Unit

2622

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 9,13-17 and 20-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See the attached Response to Arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Response to Arguments

1. Applicant's arguments filed 3/20/07 have been fully considered but they are not persuasive. The applicants submit that the prior art does not disclose the following limitations of the claimed invention:

storing, in memory of the digital camera, an uncropped portion of the merged image, as stated in claims 9 and 17. The Examiner respectfully disagrees.

Examiner's Reply:

Re Claims 9 and 17)

2. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In regard to claims 9 and 17, the Chen reference discloses a non-volatile storage (26) for saving the merged image data (see column 3, lines 23-26). The Burt reference discloses the process for cropping a merged or mosaic image (see column 11, lines 8-10 and 25-26) and storing the merged image in memory (see figure 8 and column 14, lines 60-67). It is implied that the combination of Chen and Burt discloses storing in memory of the Chen reference the an uncropped portion of the merged image cropped by the Burt method, in order for the user to be able to recall the image at a later date for viewing or further processing.

3. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning.

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But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

While it may not be explicitly stated in the references above that the functionality of an electronic device such as a mosaic based image processing system may be realized by a virtual digital camera it is well known to a skilled artisan that virtual digital camera and a mosaic based image processing system are in the same field of endeavor as they are both microcontroller/microprocessor controlled devices for processing data, such as imaging, image processing, and/or image manipulation.

Even if the virtual digital camera and the mosaic based image processing system are not in the same field of endeavor, which the examiner does not concede, the virtual digital camera and the mosaic based image processing system are reasonably pertinent to solving the problem of performing image processing to merge images and would have commended themselves to an artisan addressing such a problem. *In re Clay*, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992).

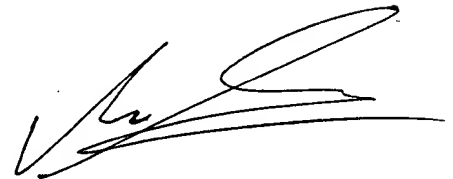
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gevell Selby whose telephone number is 571-272-7369. The examiner can normally be reached on 8:00 A.M. - 5:30 PM (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gvs



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